

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRANCE PONNEL REYES,

Defendant-Appellant.

UNPUBLISHED

January 26, 2001

No. 211977

Genesee Circuit Court

LC No. 97-001064-FC

Before: Cavanagh, P.J., and Talbot and Meter, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of twelve felony offenses: first-degree felony-murder, MCL 750.316; MSA 28.548, armed robbery, MCL 750.529; MSA 28.797, first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), two counts of assault with intent to commit murder, MCL 750.83; MSA 28.278, two counts of assault with intent to rob while armed, MCL 750.89; MSA 28.284, three counts of kidnapping, MCL 750.349; MSA 28.581, carrying a concealed weapon, MCL 750.227; MSA 28.424, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to concurrent terms of life in prison for each of the convictions except the CCW conviction, for which he was sentenced to a term of three to five years, all sentences to be served consecutively to the mandatory two-year term for felony-firearm. Defendant appeals as of right. We affirm.

Defendant challenges the sufficiency of the evidence supporting his convictions for felony-murder, assault with intent to murder, armed robbery, and first-degree CSC. In reviewing challenges to the sufficiency of the evidence, this Court views the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the offense were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992); *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of the offense. *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The elements of felony murder are (1) the killing of a person, (2) with intent to kill, to do great bodily harm, or to create a high risk of death or great bodily harm with the knowledge that death or great bodily harm was the probable result, (3) done while committing, attempting to

commit, or assisting in the commission of any of the enumerated felonies, of which armed robbery is one. *People v Carines*, 460 Mich 750, 768; 597 NW2d 130 (1999). “The facts and circumstances of the killing may give rise to an inference of malice. A jury may infer malice from evidence that the defendant intentionally set in motion a force likely to cause death or great bodily harm.” *Carines*, *supra* at 759 (citations omitted). The killing need not be contemporaneous with the enumerated felony; “[t]he statute requires only that the defendant intended to commit the underlying felony at the time the homicide occurred.” *People v Kelly*, 231 Mich App 627, 643; 588 NW2d 480 (1998). Thus, where the underlying crime “is part of a continuous transaction or is otherwise immediately connected with the killing, it is immaterial whether the underlying felony occurs before or after the killing.” *People v Hutner*, 209 Mich App 280, 282-284; 530 NW2d 174 (1995). “[T]he victim of the felony need not be the one who is murdered” as long as “the murder occurs as a natural result of either the commission of the crime or escape from it.” *People v Graves*, 52 Mich App 326, 330; 217 NW2d 78 (1974). See also *People v Bell*, 209 Mich App 273, 276-277; 530 NW2d 167 (1995).

Although the evidence did not show that defendant directly committed the charged crimes, he may be convicted and punished as a principal if he aided and abetted the person who actually committed the crimes. MCL 767.39; MSA 28.979; *People v Turner*, 213 Mich App 558, 568; 540 NW2d 728 (1995). The elements that must be proved to convict a defendant as an aider and abettor are “(1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement.” *Id.* The defendant’s “state of mind may be inferred from all the facts and circumstances” of the case. *Id.* “The term ‘aiding and abetting’ includes all forms of assistance. The term comprehends all words or deeds which may support, encourage, or incite the commission of the crime. The amount of aid or advice is immaterial so long as it had the effect of inducing the crime.” *People v Usher*, 121 Mich App 345, 350; 328 NW2d 628 (1982) (citations omitted). However, a defendant’s “[m]ere presence, even with knowledge that an offense is about to be committed or is being committed, is insufficient to establish that a defendant aided or assisted in the commission of the crime.” *People v Norris*, 236 Mich App 411, 419-420; 600 NW2d 658 (1999).

The prosecution presented sufficient evidence that defendant aided and abetted the armed robbery. The elements of armed robbery are (1) an assault and (2) a felonious taking of property from the victim’s person or presence (3) while the defendant is armed with a dangerous weapon described in the statute. *Norris*, *supra* at 414. See also *People v Newcomb*, 190 Mich App 424, 430-431; 476 NW2d 749 (1991) (an armed robbery conviction may be sustained where the weapon is used after the actual taking but before the perpetrator’s escape).

Defendant had armed himself with a sawed-off shotgun with the intention of committing a robbery with five other persons. After a couple of false starts, the group chose the victims and led them into a secluded park where the robbery and attempted robberies took place. Such evidence shows that defendant had the requisite intent to commit an armed robbery. Several assailants beat and kicked the female victim and took ten dollars from her. One of the assailants used defendant’s shotgun to strike the victim in the face, and the victim was shot in the face by another assailant. Although defendant did not directly take any money from the victim, he

assisted in the commission of the offense by assaulting the victim's friends, thereby preventing them from coming to her assistance. Therefore, the evidence was sufficient to convict defendant as an aider and abettor of the armed robbery.

The evidence further showed that one of the victims was killed. As in *Carines, supra* at 759, "[t]he jury . . . could have inferred that defendant, if not acting as the principal, had aided and abetted the murder by participating in the underlying offense, i.e., the robbery, and that the killing was within the scope of the robbers' common plan." The evidence further established that the victim was killed by a gunshot wound to the back of the head while he was lying on the ground, which supports an inference of malice. *Carines, supra* at 759; *Turner, supra* at 567. "Even if defendant had not intended to kill the victim when he entered the [park], the nature of the killing established that it was neither accidental nor done without malice. Defendant at the very least became aware of his cohort[s'] intent during the events in question." *Carines, supra* at 760. Defendant was armed. He gave his shotgun to his cousin, who said they had to kill the victims. The cousin gave the weapon to a friend, who used it to try to kill the robbery victim. When he was unable to fire the shotgun, defendant's brother fired his handgun, shooting all three victims and killing one of them. Such evidence showed, at a minimum, that defendant acted in wanton and wilful disregard of the possibility that death or great bodily harm would result. *Id.*; *Turner, supra* at 572-573. Therefore, the evidence was sufficient to convict defendant as an aider and abettor of the murder.

The prosecution presented sufficient evidence to sustain defendant's conviction for assault with intent to murder. The elements of assault with intent to murder are (1) an assault, (2) with an actual intent to kill, (3) which, if successful, would make the killing murder. *People v Barclay*, 208 Mich App 670, 674; 528 NW2d 842 (1995). Circumstantial evidence and reasonable inferences arising therefrom may constitute satisfactory proof of the elements of the offense. *Id.* The intent to kill may be proven by inference from any facts in evidence. *Id.* The evidence showed that two of the victims were shot but survived. The jury could have inferred that defendant aided and abetted the assault by participating in the robbery and attempted robberies which led to the decision to kill the victims, and that the assault was within the scope of the robbers' common plan. *Carines, supra* at 759. Defendant assisted in bringing the three victims together before they were shot. He was aware from his cousin's and brother's statements that they intended to kill the three victims. Furthermore, defendant's brother's intent to murder could be inferred from the fact that he shot the victims in the head. *People v Drayton*, 168 Mich App 174, 177-178; 423 NW2d 606 (1988). Therefore, the evidence was sufficient to convict defendant as an aider and abettor of assault with intent to murder.

Finally, the evidence was sufficient to support defendant's conviction of first-degree criminal sexual conduct as an aider and abettor. A person is guilty of first-degree criminal sexual conduct if he penetrates the victim using force or coercion and is aided and abetted by one or more other persons.¹ MCL 750.520b(1)(d)(ii); MSA 28.788(2)(1)(d)(ii). The evidence showed

¹ The trial court instructed the jury that the elements of the offense may also be satisfied by a finding of penetration by force or coercion which causes personal injury to the victim. MCL 750.520b(1)(f); MSA 28.788(2)(1)(f).

that more than one of the perpetrators beat the victim and removed her clothing. The jury could reasonably infer from the fact that defendant observed the victim performing fellatio on his cousin and saw his two friends standing nearby with their penises exposed that defendant knew that the others intended to penetrate the victim. The evidence also showed that, while the female victim was being sexually assaulted, defendant was involved in assaulting the two male victims, effectively preventing them from coming to her assistance and thus permitting the sexual assaults to continue. Therefore, the evidence was sufficient to convict defendant as an aider and abettor of first-degree criminal sexual conduct.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael J. Talbot
/s/ Patrick M. Meter